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CV05-2110 RSM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LUCKY BREAK WISHBONE
CORPORATION, a Washington corporation,
Plaintiff,

v.

HOT IDEAS INTERNATIONAL, INC., a
Nevada corporation,
Defendant.

No. _____

COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN, AND
VIOLATION OF THE
WASHINGTON STATE
CONSUMER PROTECTION ACT

JURY TRIAL REQUESTED

I. PARTIES

1. Plaintiff, Lucky Break Wishbone Corporation ("Lucky Break Wishbone"), is a Washington corporation with a principal place of business at 4400 S.W. Roxbury Place, Seattle, Washington 98136-2738.

2. On information and belief, Defendant, Hot Ideas International, Inc. ("Hot Ideas"), is a Nevada corporation doing business at 4868 Old Oak Tree Court, Orlando, Florida 32808. On information and belief, Hot Ideas is not licensed to do business in or from the state of Florida.

COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE DESIGNATION OF
ORIGIN, AND VIOLATION OF THE
WASHINGTON STATE CONSUMER
PROTECTION ACT - 1

J:\BWC\2844PL.DOC

ORIGINAL

CHRISTENSEN
O'CONNOR
JOHNSON
KINDNESSTM

LAW OFFICES
1420 Fifth Avenue, Suite 2800
Seattle, WA 98101-2347
TELEPHONE: 206.482.8100

II. JURISDICTION AND VENUE

3. This is an action arising under the Trademark Act of 1946 (15 U.S.C. § 1051 *et seq.*), the laws of the State of Washington, and the common law. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), and § 1332 (diversity) because the parties are from different states and the amount in controversy exceeds \$75,000. This Court also has jurisdiction under 15 U.S.C. § 1121 (actions arising under the Lanham Act), 28 U.S.C. § 1338 (acts of Congress relating to trademarks and unfair competition), and 28 U.S.C. § 1367 (supplemental jurisdiction over related state law claims).

4. Venue is proper in this judicial district under 28 U.S.C. § 1391.

5. This Court has personal jurisdiction over Defendant because Defendant conducts business within this district over the Internet and certain injuries relating to causes of action pleaded herein occurred within this judicial district.

III. FACTS

A. Plaintiff's Trademark Rights

6. Plaintiff, Lucky Break Wishbone, is the owner of exclusive rights in the name and mark LUCKY BREAK WISHBONE used in connection with the marketing, sale, and advertising of synthetic wishbone products and other similar goods and services.

7. Lucky Break Wishbone sells synthetic wishbones of the highest quality in association with the name and mark LUCKY BREAK WISHBONE.

8. Lucky Break Wishbone was the first company in the world to develop and sell unique synthetic wishbones in association with the name and mark LUCKY BREAK WISHBONE.

9. Lucky Break Wishbone has used the name and mark LUCKY BREAK WISHBONE continuously and exclusively since January 2004.

1 10. The name and mark LUCKY BREAK WISHBONE is inherently distinctive as
2 it serves to uniquely identify Lucky Break Wishbone as the source of synthetic wishbones
3 sold in the United States and internationally.

4 11. Lucky Break Wishbone has invested considerable time and money to develop
5 its distinctive brand of synthetic wishbones sold in association with the name and mark
6 LUCKY BREAK WISHBONE.

7 12. As a result of the significant capital investment by Lucky Break Wishbone in
8 its brand, consumers throughout the United States and internationally have come to recognize
9 the name and mark LUCKY BREAK WISHBONE as an indicator of high quality synthetic
10 wishbones from Lucky Break Wishbone.

11 **B. Defendant's Infringing Activities**

12 13. Defendant Hot Ideas sells synthetic wishbones in association with names and
13 marks confusingly similar to Lucky Break Wishbone's name and mark LUCKY BREAK
14 WISHBONE.

15 14. Hot Ideas owns and operates the domain name
16 *www.luckybreakwishbones.com*, through which it sells synthetic wishbones. The domain
17 name *www.luckybreakwishbones.com* incorporates in full the identical trademark owned by
18 Lucky Break Wishbone. The domain name *www.luckybreakwishbones.com* differs only by
19 one letter from the domain name operated by Lucky Break Wishbone,
20 *www.luckybreakwishbone.com*.

21 15. On information and belief, consumers looking for Lucky Break Wishbone
22 often type in to their Internet browser the domain name *http://www.luckybreakwishbones.com*
23 and reach the Web site owned by Defendant, Hot Ideas, on which Hot Ideas sells synthetic
24 wishbones.

25 16. On information and belief, a consumer looking for Lucky Break Wishbone,
26 typing in the domain name *http://www.luckybreakwishbones.com*, would be confused as to the

1 source or origin of Defendant Hot Ideas' goods sold in association with the domain name
2 *www.luckybreakwishbones.com*.

3 17. Use by Hot Ideas of the domain name *www.luckybreakwishbones.com* is
4 unauthorized and likely to cause confusion as to the source or origin of Hot Ideas' goods and
5 services.

6 18. In addition to owning and operating the Web site
7 *www.luckybreakwishbones.com*, Defendant Hot Ideas owns and operates Web sites associated
8 with the following domains: *www.hotideasww.com* and *www.luckywishbones.com*. The Web
9 sites associated with all three domain names offer for sale and facilitate the sale of synthetic
10 wishbones. Screen shots from all three domain names are attached to this Complaint as
11 Exhibit A.

12 19. Defendant Hot Ideas conducts business on several Web sites like the ones
13 referenced above in paragraph 18, and through other media using the name and mark LUCKY
14 WISHBONES. The name and mark LUCKY WISHBONES is confusingly similar to the
15 name and mark LUCKY BREAK WISHBONES owned exclusively by Plaintiff, Lucky Break
16 Wishbone.

17 20. Consumers are likely to be confused as to the source or origin of Defendant
18 Hot Ideas' synthetic wishbones and other related goods and services if they are sold or offered
19 for sale under the name and mark LUCKY WISHBONES. The name and mark LUCKY
20 WISHBONES differs insubstantially from the distinctive name and mark LUCKY BREAK
21 WISHBONE.

22 21. Use by Defendant Hot Ideas of the name and mark LUCKY WISHBONES is
23 unauthorized by Lucky Break Wishbone.

24 22. On information and belief, Defendant Hot Ideas was aware of Lucky Break
25 Wishbone before it decided to adopt the confusingly similar domain name
26 *www.luckybreakwishbones.com* and *www.luckywishbones.com*.

1 23. On information and belief, Defendant Hot Ideas was aware of Lucky Break
2 Wishbone and its distinctive name and mark LUCKY BREAK WISHBONE before it decided
3 to adopt the confusingly similar name and mark LUCKY WISHBONES.

4 24. On information and belief, Defendant Hot Ideas' continued use of the
5 confusingly similar name and mark LUCKY WISHBONES and its continued use of the
6 domain names *www.luckybreakwishbones.com* and *www.luckywishbones.com* intentionally
7 and willfully infringes Plaintiff's rights in its distinctive name and mark LUCKY BREAK
8 WISHBONE.

9 25. On information and belief, Defendant Hot Ideas adopted its domain names and
10 trademarks with an intent to usurp the goodwill associated with the name and mark LUCKY
11 BREAK WISHBONE.

12 26. If Defendant's infringing activities described herein do not cease, Lucky Break
13 Wishbone will suffer irreparable damage to the distinctive character of its name and mark
14 LUCKY BREAK WISHBONE in addition to monetary damages.

15 **IV. CAUSES OF ACTION**

16 **COUNT I**

17 **TRADEMARK INFRINGEMENT**

18 27. Lucky Break Wishbone realleges paragraphs 1-26 of this Complaint as if fully
19 set forth herein.

20 28. Defendant's infringing activities described herein constitute trademark
21 infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

22 **COUNT II**

23 **VIOLATION OF THE WASHINGTON STATE CONSUMER
24 PROTECTION ACT**

25 29. Lucky Break Wishbone realleges paragraphs 1-26 of this Complaint as if fully
26 set forth herein.

1 30. The unauthorized use by Defendant of a trademark confusingly similar to the
2 name and mark LUCKY BREAK WISHBONE constitutes unfair trade practices and unfair
3 competition in violation of the Washington State Consumer Protection Act, RCW § 19.86.090
4 *et seq.*

5 **V. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Lucky Break Wishbone respectfully prays that this Court
7 enter judgment in its favor against Defendant and provide to Lucky Break Wishbone the
8 following relief:

9 A. A preliminary and permanent injunction enjoining and prohibiting Defendant,
10 its agents, servants, employees, officers, successors, assigns, and all persons, firms, and
11 corporations acting in concert or in participation with Defendant or on Defendant's behalf
12 from using the trademarks LUCKY BREAK WISHBONE, LUCKY WISHBONES, or any
13 name and mark confusingly similar thereto in association with the production, distribution, or
14 marketing of synthetic wishbones or any other similar goods or services.

15 B. An Order transferring ownership of the domain names
16 *www.luckybreakwishbones.com* and *www.luckywishbones.com* to the Plaintiff, Lucky Break
17 Wishbone, and prohibiting the registration by Defendant of any domain name incorporating
18 Plaintiff's names and marks or confusingly similar names and marks.

19 C. An Order entering judgment awarding Lucky Break Wishbone compensatory
20 and exceptional damages to be paid jointly and severally by Defendant and its principals
21 pursuant to 15 U.S.C. § 1117 and RCW § 19.86.090, and all other applicable laws, plus a
22 reasonable attorney's fee and costs incurred in this matter.

23 D. Such other and further relief as this Court may deem just and proper.
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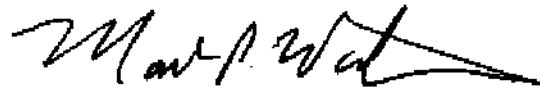
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VI. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Lucky Break
Wishbone hereby demands a trial by jury of all issues so triable.

Dated this 21st day of December, 2005.

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}



Mark P. Walters, WSBA No.: 30,819
Christensen O'Connor Johnson Kindness^{PLLC}
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Seattle, WA 98101-2347
Telephone: 206.682.8100
Fax: 206.224.0779
E-mail: walterm@cojk.com,
courtdocs@efiling.com
Attorney for Plaintiff



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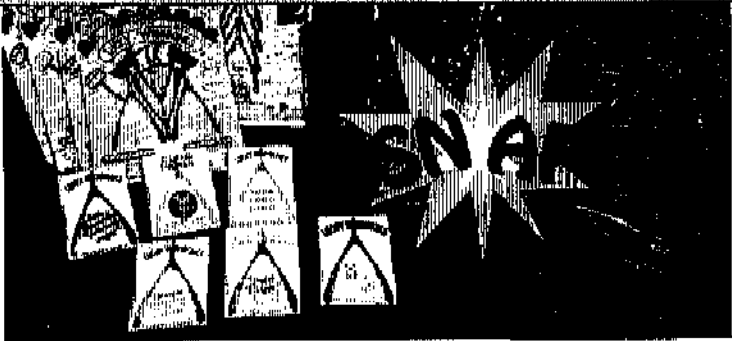
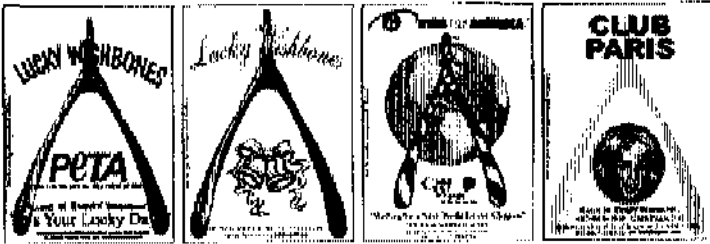

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Address <https://www.luckybreakwishbones.com/>

one to a turkey or chicken. They're great for adults and children. Lucky WishBones are perfect for fundraisers, promotional gifts, special events, corporate gifts, and employee or customer appreciation programs. Custom imprinting is available on the legs of each Lucky WishBone and on the 4-color single pack insert cards. We can print your company logo, slogan, school name, team name, mascot or fundraiser event on both the Lucky WishBones and the single pack inserts. We will customize for your needs - the only limitation is your imagination!

Lucky WishBones make a great accessory to any event. It's the Best Party Item ever to put the promotions market! They make the perfect gift for all occasions - holidays, weddings, anniversaries, birthdays, Father's day, mother's day, graduations, parties, births, bar mitzvah's, tournaments and more!

"Lucky WishBones" can be ordered in various colors and sets:
 Unwrapped/imprinted single Lucky WishBones
 Clear Wrapped/imprinted single Lucky WishBones with custom insert card
 Lucky WishBones 4-Packs
 Other custom packaging options are available.

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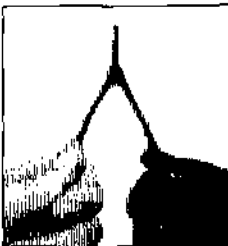
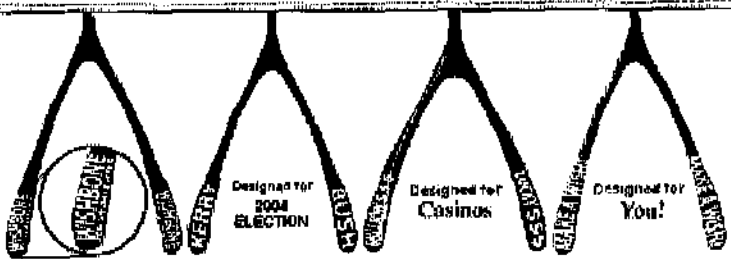
Lucky Wishbones, Thanksgiving, Christmas, Birthdays, Parties - Microsoft Internet Explorer

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Address <http://www.luckytrashwishbones.com/> Go Links

available.

The family Christmas Tree was introduced to the world over 200 years ago, bringing the sparkle of happiness, warmth and joy to families all around the world. Not since then has a New ICON been introduced that gives entire families the opportunity to create lasting warm memories of those special Holidays like Thanksgiving and Christmas...until now!

An R&D company in Orlando, Florida, Hot Ideas International Inc., has created "Lucky WishBones", aka "WishBones for the Masses." They will soon be sold in all of the nation's retail Stores tailored to Family, Sports, or Political Parties via imprints on the legs. Hot Ideas the Worlds Top Authority on WishBone Lore, holds the World wide Patents & Copyrights. No other company offers these realistic WishBones which truly includes the charming history of the LEGEND of the WishBone.



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Address http://www.luckyredwishbones.com/

"WishBones For the Masses." They will soon be sold in all of the nation's retail Stores tailored to Family, Sports, or Political Packs via imprints on the legs. Hut I dear the Worlds Top Authority on WishBone Lore, holds the World wide Patents & Copyrights. No other company offers these realistic WishBones which nicely includes the charming history of the LEGEND of the WishBones.

Sadly there is only one WishBone in a Turkey, so most of the family is left out. Boo Hoo. Boo Hoo. The kids especially feel bad at not having a chance to be part of the family fun. Children WANT their own WishBones. Now, no child is left behind! Everybody really Deserves their own LUCKY WishBones. There's never enough. Kids always fight over them. WishBones will Top Everybody's Wish List.

And now Everyone in the family finally gets to have their very own WishBone and a chance to make their very own Lucky Wish! They can even get a 2nd Chance to Win their Best Wish if they don't get the Lucky Break the 1st time because now every one can have as many Lucky Wishbones and Wishes as their hearts desire.

For Children, it's something special, a little Treasure, all their very own. It's the same emotion children feel when they blow out birthday candles or wish upon a falling star. It's real. It's great fun for all parties and all family get-togethers. Both children & adults get excited about making wishes together in a party and family atmosphere. Lucky WishBones allow ALL the children and each member of the family to equally share in those special moments of fun & excitement at family get-togethers. It is something they will all eagerly look forward to.

Great for Gifts
Everybody LOVES Them!

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WishBones are just plain fun and everyone loves to join in and partake in the enjoyment of the exciting tension of waiting for "That Satisfying Telltale Snap" to see who the winner is. Warm Memories of Joy & Jubilation are made of this and last a lifetime. It is sure to become one of America's new best Friends and an icon of Family Enjoyment & Togetherness. This is a STORY WAITING TO BE TOLD! The "Get Lucky" Version of the WBs turned out to be a great "icebreaker" at house & office parties, social gatherings, Wedding & Baby Showers. Everybody but everybody wants a crack at it. We'd like to get the word out that Wishbones are no longer limited to one per Turkey! It's about time somebody came up with this WishBone idea that allows the whole Family to have interactive fun. These Party WishBones will be gobbled up!


NOTE: In addition to the colorful FAMILY Wishbone 4-Packs, Larger Quantities of Wishbones in 50 & 100 Wishbones size packs for Parties will soon be available in stores Nationwide. "Endless WishBones for Endless Wishes!"

Interesting Point: To get 50 WishBones of this size, you would have to cook a whole Flock of 50 twenty-pound turkeys. That thousand pounds of turkey meat makes for a lot of leftovers. Chew on that!


WishBones that the ENTIRE Family can enjoy! Build and Reinforce Family Values & Traditions for years to come!



Breaking News in Iraq: Hot Ideas International, Inc. in Orlando, Florida announced it's "Operation: Troop Wishes" Donation Program of 100,000 WishBones for the Troops in Iraq and Afghanistan. Shipment for the Thanksgiving & Christmas Holidays has been formally approved by the Central Command of the USA. The Operations Center in Florida that orchestrates the War effort will direct the Logistics of delivering it to those countries so that every soldier will receive their own WishBone for the Thanksgiving Holiday to give them pleasant memories of better times Back Home while they are so far far away. Sometimes it's the little things in life that mean the most. A Special Thanks to Florida Governor Jeb Bush and his staff who graciously got behind the project and helped to make it all happen. Maybe the President himself will wind up Breaking WishBones for Good Luck Wishes with the Troops overseas during the Holidays.



[Click Here to BUY Lucky WishBones!](#)



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"Lucky WishBones" - Great Interactive Gifts.

It's your Lucky Day!

Now everyone can interact and participate in this timeless traditional wishing activity - even vegetarians! This product puts an end to any rivalry over the wishbone, which only comes one to a turkey or chicken. They're great for adults and children. Lucky WishBones are perfect for fundraisers, promotional gifts, special events, corporate gifts, and employee or customer appreciation programs. Custom imprinting is available on the legs of each Lucky WishBone and on the 4 color single pack insert cards. We can print your company logo.



Internet

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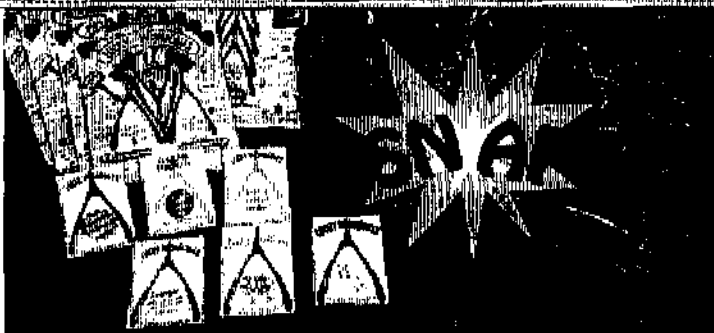


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Scybot-360 (advanced mode)
 Software to remove cookies and similar threats from your computer


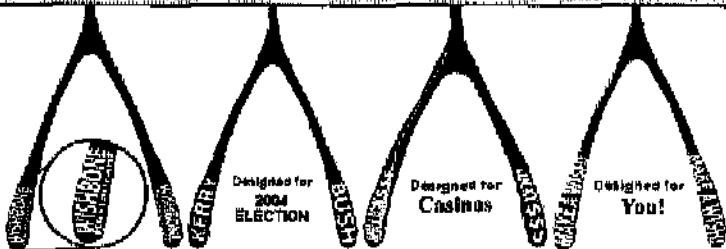
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50 Lucky WishBones!

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"Lucky WishBones" - Great Interactive Gifts.

It's your Lucky Day!

Now everyone can interact and participate in this timeless traditional wishing activity - even vegetarians! This product puts an end to any rivalry over the wishbone, which only comes one to a turkey or chicken. They're great for adults and children. Lucky WishBones are perfect for fundraisers, promotional gifts, special events, corporate gifts, and employee or customer appreciation programs. Custom imprinting is available on the legs of each Lucky WishBone and on the 4-color single pack insert cards. We can print your company logo.



Lucky WishBones, Thanksgiving, Christmas, Birthdays, Parties - Microsoft Internet Explorer



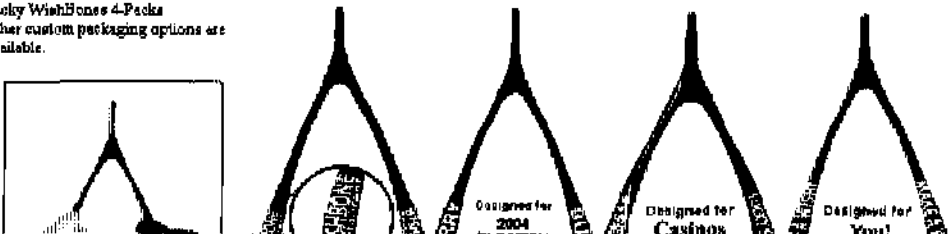
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Address http://www.luckywishbones.com/

custom appreciation programs. Custom imprinting is available on the legs of each Lucky WishBone and on the 4-color single pack insert cards. We can print your company logo, slogan, school name, team name, mascot or fundraiser event on both the Lucky WishBones and the single pack inserts. We will customize for your needs - the only limitation is your imagination!

Lucky WishBones make a great accessory to any event. It's the Best Party Item ever to hit the promotions market. They make the perfect gift for all occasions - holidays, weddings, anniversaries, birthdays, father's day, mother's day, graduations, parties, births, bar mitzvahs, tournaments and more!

"Lucky WishBones" can be ordered in various colors and sets:
 Unwrapped/imprinted single Lucky WishBones
 Clear Wrapped/imprinted single Lucky WishBones with custom insert card
 Lucky WishBones 4-Packs
 Other custom packaging options are available.


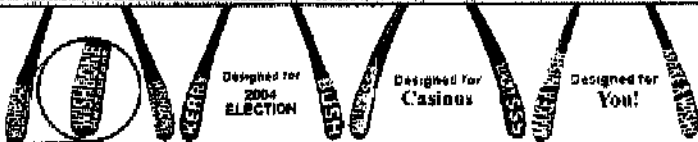




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Back Forward Stop Search Favorites History Home


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The Family Christmas Tree was introduced to the world over 200 years ago, bringing the sparkle of happiness, warmth and joy to families all around the world. Not since then has a New BCON been introduced that gives entire families the opportunity to create lasting warm memories of those special Holidays like Thanksgiving and Christmas. Wish now!

An R&D company in Orlando, Florida, Hot Ideas International, Inc., has created "Lucky WishBones", aka "WishBones for the Masses." They will soon be sold in all of the nation's retail Stores tailored to Family, Sports, or Political Packs via imprints on the legs. Hot Ideas the Worlds Top Authority on WishBone Lore, holds the World wide Patents & Copyrights. No other company offers these realistic WishBones which nicely includes the charming history of the LEGEND of the WishBone.

Sadly there is only one WishBone in a Turkey, so most of the family is left out. Boo Hoo, Boo Hoo. The kids



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WishBones

Sadly there is only one WishBone in a Turkey, so most of the family is left out - Bon Hoo, Bon Hoo. The kids especially feel bad at not having a chance to be part of the family fun. Children WANT their own WishBone. Now, no child is left behind! Everybody really Deserves their own LUCKY WishBone. There's never enough. Kids always fight over them. WishBones will Top Everybody's Wish List.

And now Everyone in the family finally gets to have their very own WishBone and a chance to make their very own Lucky Wish! They can even get a 2nd Chance to Win their Best Wish if they don't get the Lucky Break the 1st time because now every one can have as many Lucky Wishbones and Wishes as their hearts desire.

For Children, it's something special, a little Treasure, all their very own. It's the same emotion children feel when they blow out birthday candles or wish upon a falling star. It's real. It's great fun for all parties and all family get-togethers. Both children & adults get excited about making wishes together in a party and family atmosphere. Lucky WishBones allow ALL the children and each member of the family to equally share in those special moments of fun & excitement at family get-togethers. It is something they will all eagerly look forward to.

WishBones are just plain fun and everyone loves to join in and partake in the enjoyment of the exciting tension of waiting for "That Satisfying Telltale Snap" to see who the winner is. Warm Memories of Joy & Jubilation are made of this and last a lifetime. It is sure to become one of America's new best Friends and an icon of Family Enjoyment & Togetherness. This is a STORY WAITING TO BE TOLD! The "Ost Lucky" Version of the WBs turned out to be a great "Icebreaker" at house & office parties, social gatherings, Wedding & Baby Showers. Everybody but everybody wants a crack at it. We'd like to get the word out that Wishbones are no longer limited to one per Turkey! It's about time somebody came up with this WishBone idea that allows the whole Family to have interactive fun. These Party WishBones will be gobbled up!


NOTE: In addition to the colorful FAMILY Wishbone 4-Packs, Larger Quantities of Wishbones in 30 & 100 Wishbones size packs for Parties will soon be available in stores Nationwide. "Endless WishBones for Endless Wishes!"

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Interesting Point: To get 50 WishBones of this size, you would have to cook a whole flock of 50 twenty-pound turkeys. That thousand pounds of turkey meat makes for a lot of leftovers. Chew on that!

WishBones that the ENTIRE Family can enjoy! Build and Reinforce Family Values & Traditions for years to come!




Breaking News in Iraq: Hot Ideas International, Inc. in Orlando, Florida announced it's "Operation: Troop Wishes" Donation Program of 100,000 WishBones for the Troops in Iraq and Afghanistan. Shipment for the Thanksgiving & Christmas Holidays has been formally approved by the Central Command of the USA. The Operations Center in Florida that orchestrates the War effort will direct the Logistics of delivering it to those countries so that every soldier will receive their own WishBone for the Thanksgiving Holiday to give them pleasant memories of better times Back Home while they are so far far away. Sometimes it's the little things in life that mean the most. A Special Thanks to Florida Governor Jeb Bush and his staff who graciously got behind the project and helped to make it all happen. Maybe the President himself will wind up Breaking WishBones for Good Luck Wishes with the Troops overseas during the Holidays.



NO Lucky WishBones!

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